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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA
12

13 DIMITRITZA TOROMANOVA, an
Individual,

14 Plaintiff,

15 vs.

16 WELLS FARGO BANK, N.A.; WACHOVIA
17 MORTGAGE, FSB; NATIONAL DEFAULT
18 SERVICING CORP; and TIFFANY K.
LABO,

19 Defendants.
20

Case No.: 2:12-cv-01637-LRH-(CWH)

21 **MOTION FOR EXTENSION OF TIME TO FILE**
STIPULATED DISCOVERY PLAN AND SCHEDULING ORDER

22 **(First Request)**

23 In accordance with Fed. R. Civ. P. 6(b), Defendant Wachovia Mortgage, a division of
24 Wells Fargo Bank, N.A., formerly known as Wachovia Mortgage, FSB, formerly known as
25 World Savings Bank, FSB (“Wells Fargo”), moves this Court for an order extending the time to
26 file a stipulated discovery plan and scheduling order until after such time as the Court renders a
27 decision on Wells Fargo Bank, N.A.’s Motion to Dismiss and to Expunge Lis Pendens, and
28 Motion for Order Declaring Plaintiff a Vexatious Litigant (Docs. #10, #11, and #12), National

1 Default Servicing Corporation's Motion to Dismiss (Doc. # 8), and Tiffany K. Labo's Motion to
2 Dismiss (Doc. #14). Wells Fargo bases this motion on the pleadings and papers on file and the
3 following memorandum of points and authorities.

4 DATED this 15th day of November 2012.

5 DAVID J. MERRILL, P.C.

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7 By: 

8 DAVID J. MERRILL

9 MORGAN F. SHAH

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15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 Fed. R. Civ. P. 6(b) permits a party to seek an extension of time where, as here, good
17 cause exists for an extension to be made. Pursuant to LR 6-1, Wells Fargo states that this is its
18 first proposed extension of time for the parties to conduct a scheduling conference and submit a
19 Stipulated Discovery Plan and Scheduling Order. Wells Fargo submits the following as grounds
20 demonstrating good cause for the additional time sought and that the additional time is not the
21 result of excusable neglect or simply for the purpose of delay:

22 1. With another case pending against Wells Fargo and National Default Servicing
23 Corporation ("NDSC") before this Court on identical claims, the plaintiff, Dimitritza
24 Toromanova ("Toromanova"), filed the Complaint initiating this action in state court on August
25 27, 2012. (Doc. #1-1). Wells Fargo filed its Petition for Removal (Doc. #1) on September 18,
26 2012.

27 2. Wells Fargo responded to the Complaint by filing its Motion to Dismiss and to
28 Expunge Lis Pendens, and Motion for Order Declaring Plaintiff a Vexatious Litigant (Docs. #10,
#11, and #12) (the "Wells Motion") on September 25, 2012. Likewise, NDSC and Tiffany K.
Labo ("Labo") each responded to the Complaint by filing motions to dismiss on September 25,
2012 and October 1, 2012 respectively. (Docs. #8 and #14).

1 3. Rather than respond to the defendants' motions, Toromanova filed a Motion to
2 Remand (Doc. #17) on October 10, 2012, and on October 18, 2012 Toromanova filed a one page
3 "opposition" to Labo's motion to dismiss (Doc. #19) in which she flatly asserts that this Court
4 does not have jurisdiction over this matter.

5 4. The Court may stay discovery pending a decision on a dispositive motion if the
6 Court is convinced the plaintiff will be unable to state a claim for relief. *See Turner*
7 *Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 555-56 (D. Nev. 1997); *Twin City*
8 *Fire Ins. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989).

9 5. The doctrine of *res judicata* bars a plaintiff from litigating claims that were raised
10 or could have been raised in a prior action. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688
11 (9th Cir. 2005).

12 6. In addition, Local Rule 7-2(d) provides that "the failure of an opposing party to
13 file points and authorities in response to any motion shall constitute a consent to the granting of
14 the motion."

15 7. Wells Fargo submits that, as set forth in the Wells Motion, Toromanova fails to
16 state a claim upon which relief can be granted. In particular, Toromanova's claims are barred by
17 *res judicata*, as they were already dismissed twice by this Court. *See* Order (Aug. 17, 2011),
18 Case No. 2:10-cv-02193-PMP-(GWF); Order (Jun. 25, 2012), Case No. 2:12-cv-00328-GMN-
19 (CWH). Further, even if they were not barred by *res judicata*, Toromanova's claims fail as a
20 matter of law. Moreover, Toromanova failed to timely file points and authorities in response to
21 the defendants' motions to dismiss.

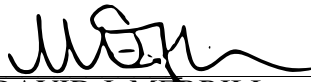
22 8. Consequently, Wells Fargo submits that the interests of efficiency and judicial
23 economy are best served by postponing the scheduling conference and extending the deadline to
24 file a stipulated discovery plan and scheduling order to a later date so that the Court may have an
25 opportunity to rule upon the defendants' unopposed motions to dismiss.

26 For these reasons, Wells Fargo respectfully submits that good cause exists for granting
27 this motion. Accordingly, Wells Fargo requests that the Court grant its motion and permit the
28 parties to meet and/or confer as required by Fed. R. Civ. P. 26(f) within 30 days after the Court

1 enters an order ruling on the defendants' motions to dismiss, and to file a Stipulated Discovery
2 Plan and Scheduling Order within 14 days thereafter.

3 DATED this 15th day of November 2012.

4 DAVID J. MERRILL, P.C.

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6 By: 
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 15th day of October 2012, service of the foregoing Motion for Extension of Time to File Stipulated Discovery Plan and Scheduling Order was made to all counsel in the action through the Court's CM/ECF system. In addition, service was made by placing a copy in the United States Mail, postage prepaid and addressed to the following at their last known addresses:

Dimitritza Toromanova
Post Office Box 19153
Las Vegas, Nevada 89132


An employee of David J. Merrill, P.C.